

BEFORE THE COMMISSIONER OF  
POLITICAL PRACTICES  
STATE OF MONTANA

In the Matter of the Complaint	)	
Against Montana Common Cause,	)	<b>SETTLEMENT STIPULATION</b>
the League of Women Voters of	)	<b>AND</b>
Montana, Mont-PIRG and Other	)	<b>RELEASE OF ALL CLAIMS</b>
Entities and Political Committees	)	
Supporting I-125 and I-121	)	

SETTLEMENT STIPULATION AND RELEASE OF ALL CLAIMS BETWEEN THE COMMISSIONER OF POLITICAL PRACTICES AND CITIZENS TO QUALIFY I-125; LEAGUE OF WOMEN VOTERS OF MONTANA, MONTANA COMMON CAUSE, MONT-PIRG, 2030 FUND, INC., AND CITIZENS FOR I-125; C.B. PEARSON; JONATHAN MOTL; CHRIS NEWBOLD; AND BARB SEEKINS AS DESCRIBED IN THE COMMISSIONER'S AUGUST 7, 2002 SUMMARY OF FACTS AND STATEMENT OF FINDINGS

1. **Description of Claims.** On August 7, 2002, Linda Vaughey, Commissioner of Political Practices for the State of Montana ("Commissioner"), issued a Summary of Facts and Statement of Findings in this matter concluding that Citizens to Qualify I-125, League of Women Voters of Montana, Montana Common Cause, Mont-PIRG, 2030 Fund, Inc., and Citizens for I-125 ("LWVM and Others for I-125"), C.B. Pearson, I-125 Campaign Treasurer, and Jonathan Motl, Chris Newbold and Barb Seekins, I-125 Campaign Board Members, failed to properly report certain contributions and expenditures in support of I-125 during the 1996 election.

2. **Agreements to Modify Facts and Findings Concerning Certain Violations.** During negotiations concerning the agreements set forth in this Settlement Stipulation, Citizens to Qualify I-125, LWVM and Others for I-125, Mr. Pearson, Mr. Motl, Mr. Newbold and Ms. Seekins presented additional evidence and made arguments

concerning several alleged violations identified in the August 7, 2002 Summary of Facts and Statement of Findings. The Commissioner has determined that certain Facts and Findings in the August 7, 2002 decision should be modified based on a consideration of the additional facts, statutes and rules presented by the I-125 proponents. The Commissioner agrees to use this Settlement Stipulation to further define what are reportable and nonreportable activities under Montana's Campaign Finance and Practices Act and rules, with particular emphasis on defining volunteer acts that are not reportable campaign expenditures or contributions.

**A. Past Precedent.** The I-125 proponents' reconsideration request was based on Sections 13-1-101(3) and 13-35-102, MCA, and two informal opinions issued by the Commissioner concluding that campaign signs placed on business or residential property are not a reportable campaign contribution by the property owner. See the October 4, 1999 and October 10, 2000 informal opinion letters to Jim Jensen attached to this Settlement Stipulation.

The reconsideration rationale advanced by the I-125 proponents is that under the definition of "anything of value" in Section 13-1-101(3), MCA, providing certain goods or services without compensation only becomes a reportable campaign contribution or expenditure if such goods or services are "ordinarily not given away free" but are "purchased." In addition, Section 13-35-102, MCA, states that it is not intended that Montana's election laws "criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of

undermining the election process." Within these broad statutory provisions, the I-125 proponents assert that there are certain volunteer acts that are ordinarily given away without charge and have trivial benefits to a political campaign. The I-125 proponents assert that these acts should not trigger reporting requirements under Montana's Campaign Finance and Practices Act. The Commissioner agrees that there are other acts which fall into the same category as a property owner who allows a candidate to place a yard sign on his/her residential or commercial property. So long as the act is ordinarily performed without charge and the act bestows only "trivial benefits incidental to the campaign process" without a "substantial risk of undermining the election process," the act does not become a reportable campaign contribution or expenditure. Accordingly, the Commissioner agrees that the following Facts and Findings in the August 7, 2002 decision should be modified as provided in paragraph's 2B, 2C, and 2D:

**B. Fact 136 and Finding 8, John Heffernan.** The Commissioner found that John Heffernan sent an I-125 fax on his business (corporate) stationery and that the I-125 campaign should have reported the value of the corporate office space, equipment and supplies used to send the I-125 campaign fax. Mr. Heffernan was an I-125 campaign volunteer who received no payment or compensation for his efforts. Mr. Heffernan's corporate office and the fax machine used to send the I-125 fax were located in his home. There is no evidence that Mr. Heffernan regularly or repeatedly used his

home business office and equipment to engage in I-125 activities. The Commissioner finds that Mr. Heffernan's one-time use of paper and his home business fax machine as described in Fact 136 and Finding 8 of the August 7, 2002 decision is an activity that is "ordinarily given away free" and had only trivial benefit to the I-125 campaign. This Finding is consistent with the Commissioner's prior informal opinions to Mr. Jensen concluding that the value of space provided for campaign yard signs is not a reportable contribution or expenditure.

It must be noted that the Commissioner's Finding concerning Mr. Heffernan's one-time fax of I-125 campaign information from his home or home business is based on a consideration of several factors. Mr. Heffernan's fax was a confirmation that two Missoula-area politicians had agreed to support I-125 and a copy of a proposed press release. The determination of whether the faxed material involved goods or services "ordinarily given away free" or involved only "trivial benefits incidental to the campaign process" requires a consideration of the following:

(i) Whether an individual is paid or is a volunteer. If an individual is paid to provide services to a political committee, the value of the services provided must be reported, no matter how small, and so must the accompanying value of any goods (e.g., faxes, phone calls, copying), no matter how small.

(ii) If an individual is volunteering services to a political campaign, the frequency of the volunteer's use of his/her home, office space, equipment and supplies for campaign activities will

be evaluated. A volunteer's use of office space, equipment and supplies on an infrequent and sporadic basis in a political campaign would generally not be reportable. However, frequent or repeated use of home office space, equipment and supplies in a political campaign or in more than one campaign would not be goods "ordinarily given away free" or involving only "trivial benefits" to a political campaign.

(iii) The value of the goods provided to a campaign will also be considered. A single fax confirming a campaign meeting or the endorsement of a local politician may be "ordinarily given away free" or have "trivial benefit" to a campaign. Conversely, an office fax containing names of several hundred members of a private association to be used for a campaign mailing or an endorsement letter from a respected businessman on corporate stationery to be used in a campaign ad has great value to a political campaign. The Commissioner will examine the act or the goods provided to determine whether the value (benefits) to the political campaign have more than "trivial" value.

**C. Fact 144 and Finding 7, American Lung Association of Montana.** The Commissioner concluded that the LWVM and Others for I-125 should have reported in-kind contributions made by paid staff for the American Lung Association of Montana. Based on information submitted by the I-125 proponents during negotiation of this Settlement Stipulation, the Association's contacts with C.B. Pearson and LWVM and Others for I-125 were made to obtain information on I-125 for the purpose of advancing the Lung

Association's efforts to fund anti-tobacco efforts. The Lung Association's contacts were for the benefit of the Association and not for the advancement of the I-125 campaign. Accordingly, LWVM and Other for I-125 did not fail to report in-kind expenditures or contributions made by the American Lung Association of Montana.

**D. Fact 112, Finding 2, Jonathan Motl and the Law Firm of Reynolds, Motl and Sherwood.** The Commissioner found that Jonathan Motl charged LWVM and Others for I-125 one-half of his normal hourly rate of \$100 when providing paid services to the I-125 campaign. The Commissioner's Finding was based, in part, on Mr. Motl's September 25, 1996 letter to C.B. Pearson in which Mr. Motl stated that they had agreed that Mr. Motl "could be paid at a rate of \$50 per hour for ...[his] time (½ ...[his] normal fee)." The Commissioner concluded that LWVM and Others for I-125 should have reported an in-kind contribution of \$50 per hour (the difference between the \$50/hour Mr. Motl charged and his "normal fee" of \$100/hour) for the services provided by Mr. Motl.

The I-125 proponents and Mr. Motl assert that the \$50 per hour charged by Mr. Motl was the normal rate charged to public interest groups in 1996 by Mr. Motl if he billed such groups for his services (Mr. Motl also volunteered some of his time to the I-125 campaign). Mr. Motl provided the Commissioner's office with copies of his 1996 billing records and other documents. The Commissioner has concluded that Mr. Motl's fee for legal services to public interest groups in 1996 was \$50 per hour. The Commissioner has also confirmed that Mr. Motl was not paid any additional amount by

his law firm or any other entity for the work billed to LWVM and Others for I-125 at \$50 per hour. Therefore, the I-125 proponents were not obligated to report an in-kind contribution of \$50 per hour from Mr. Motl for his paid work on I-125.

The preceding conclusion would be different if Mr. Motl had been paid a fixed salary by his law firm in 1996. For example, if Mr. Motl's 1996 law firm salary was \$100,000 per year and he continued to receive his full salary regardless of the amount being billed, then the difference between Mr. Motl's hourly salary plus benefits and the amount billed to the principal I-125 committee would have been reportable as an in-kind contribution to the I-125 campaign.

E. The revised Facts and Findings in paragraphs 2A, 2B, 2C and 2D supersede and modify the applicable Facts and Findings in the August 7, 2002 decision.

F. Except as expressly modified in paragraphs 2A, 2B, 2C and 2D of this Settlement Stipulation, the Commissioner reaffirms her August 7, 2002 decision.

**3. Answer, Denials and Admissions of I-125 Proponents.**

Citizens to Qualify I-125, LWVM and Others for I-125, Mr. Pearson, Mr. Motl, Mr. Newbold and Ms. Seekins deny that they violated Montana's Campaign Finance and Practices Act and rules except as expressly admitted in paragraphs 3B and 3C of this Settlement Stipulation. In addition to this general denial of violations, the I-125 proponents:

A. Agree with the modifications to the August 7, 2002 Summary of Facts and Statement of Findings set forth in paragraphs 2A, 2B, 2C and 2D.

B. Admit that under the logic of paragraph 3A of this Settlement Stipulation, Citizens to Qualify I-125 and LWVM and Others for I-125 failed to report certain in-kind contributions made by Mont-PIRG, the Montana Trial Lawyers Association ("MTLA") and U.S.-PIRG that involved paid staff or exceeded the "ordinarily given away free" and the "trivial benefits" standards.

C. Admit that during the period that Jonathan Motl volunteered his I-125 services, Citizens to Qualify I-125 should have reported as an in-kind contribution the value of Mr. Motl's office overhead (office space, equipment and supplies) for I-125 activities in addition to the cost of Mr. Motl's paid support staff, copying and phone calls that were properly reported by the I-125 proponents. The I-125 proponents admit that the Commissioner's determination on this issue is consistent with previous decisions concerning the Montana Chamber of Commerce and Montanans for Common Sense Water Laws.

D. Assert that the Commissioner's determination that the Rainbow Coalition, the Center for New Democracy, Texans for Public Justice and Governor Richard Lamm engaged in reportable I-125 campaign activity is erroneous. The I-125 proponents assert that the limited activities of these entities fall under the "ordinarily given away free" and "trivial benefits" analysis in paragraph 2B of this Settlement Stipulation.



E. Assert that the Mont-PIRF study "Big Money and Montana's Ballot Campaigns" is not a reportable coordinated campaign expenditure because the 1996 coordinated expenditure rule did not apply to ballot issue campaigns. The I-125 proponents acknowledge that the coordinated expenditure rule was amended to apply to ballot issue campaigns in 1999.

F. Assert that the alleged violations identified in the Commissioner's August 7, 2002 decision are barred by the applicable statute of limitations (Section 13-37-130, MCA).

G. Assert that Citizen to Qualify I-125 and LWVM and Others for I-125 cannot be held accountable for in-kind expenditures not reported by an incidental committee. The I-125 proponents urge the Commissioner to explore the adoption of rules to address this issue.

H. Assert that the I-125 campaign activities of C.B. Pearson related to the teaching of the EOS course at the University of Montana are not reportable campaign expenditures because the teaching activities were undertaken as part of an academic and educational endeavor.

I. Assert that the funds raised on behalf of Mont-PIRG by the Fund for Public Interest Research ("FFPIR") were properly reported as Mont-PIRG contributions.

**4. Amount of Contributions and Expenditures Not Accurately Reported.** The parties agreed that settlement discussions would be based on the value of the expenditures and contributions allegedly made in violation of Montana's campaign finance reporting laws and

rules as set forth in the Commissioner's August 7, 2002 Summary of Facts and Statement of Findings and as modified by paragraph 2 of this Settlement Stipulation. This Settlement Stipulation is based on the following amounts:

A. The Commissioner alleges that Citizens to Qualify I-125 and LWVM and Others for I-125 failed to report in-kind contributions and expenditures by Mont-PIRG, the Law Firm of Motl, Reynolds and Sherwood, MTLA, C.B. Pearson, the Rainbow Coalition, the Center for New Democracy, U.S.-PIRG, Texans for Public Justice and Governor Richard Lamm. The Commissioner believes that the total amount of such unreported in-kind contributions and expenditures involving salaries and the use of office space, equipment and supplies for I-125 campaign activities did not exceed \$10,000.

B. The Commissioner alleges that Citizens to Qualify I-125 and LWVM and Others for I-125 failed to accurately report approximately \$13,000 in the name of the Fund for Public Interest Research ("FFPIR") rather than Mont-PIRG. The amount of the monetary contribution made by FFPIR was accurately reported but in the name of Mont-PIRG, not FFPIR. Mont-PIRG denies that the FFPIR contribution should have been reported as a FFPIR contribution. Mont-PIRG does not dispute the amount of the monetary contribution (approximately \$13,000) at issue in this paragraph.

C. The Commissioner alleges that Citizens to Qualify I-125 and LWVM and Others for I-125 failed to report the cost of producing and publishing the Mont-PIRG study entitled "Big Money

and Montana's Ballot Issue Campaigns." The cost of producing and publishing the Mont-PIRF study was \$2,656.70.

5. **Settlement Amount.** To avoid costly and lengthy litigation, Citizens to Qualify I-125, LWVM and Others for I-125 and their Treasurer and Board Members agree to pay a civil penalty of Two Thousand Dollars (\$2,000.00) as full settlement of all claims against Citizens to Qualify I-125, LWVM and Others for I-125, C.B. Pearson, Jonathan Motl, Chris Newbold and Barb Seekins.

6. **No Admission of Liability.** It is understood and agreed that the payment of the civil penalty by Citizens to Qualify I-125, LWVM and Others for I-125, C.B. Pearson, Jonathan Motl, Chris Newbold and Barb Seekins as provided in paragraph 5 of this Settlement Stipulation is accepted as the sole consideration for full satisfaction and compromise of disputed claims. Neither the payment of the civil penalty nor the negotiations for settlement shall be considered as an admission of any liability or wrongdoing by Citizens to Qualify I-125, LWVM and Others for I-125, C.B. Pearson, Jonathan Motl, Chris Newbold or Barb Seekins except as expressly agreed to in this Settlement Stipulation.

7. **Mutual Release.** In consideration of the mutual release of all claims and the mutual agreements in this Settlement Stipulation, the Commissioner fully and forever releases and discharges Citizens to Qualify I-125, LWVM and Others for I-125, C.B. Pearson, Jonathan Motl, Chris Newbold and Barb Seekins as named in the Commissioner's August 7, 2002 decision from any and all actions, claims causes of action, demands, rights, damages and

costs, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of, connected with, or based wholly or in part on the described claims in the Commissioner's August 7, 2002 Summary of Facts and Statement of Findings. In consideration of the mutual release of all claims and the mutual agreements in this Settlement Stipulation, Citizens to Qualify I-125, LWVM and Others for I-125, C.B. Pearson, Jonathan Motl, Chris Newbold and Barb Seekins fully and forever release and discharge the Commissioner and the State of Montana, their employees and agents, from any and all actions, claims, causes of action, demands, rights, damages and costs, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of, connected with, or based wholly or in part on the described claims, or on the Commissioner's investigation and decision-making as set forth in the Commissioner's August 7, 2002 Summary of Facts and Statement of Findings.

8. **Full and Complete Settlement.** It is understood and agreed that this Settlement Stipulation will be placed in the Commissioner's official files on this matter within five (5) days after receipt of all the parties' original signature pages and the civil penalty agreed to in paragraph 5 of this Settlement Stipulation. It is further understood and agreed that the filing of this Settlement Stipulation in the Commissioner's official files constitutes a full and complete settlement of all violations alleged in the Commissioner's August 7, 2002 Summary of Facts and

Statement of Findings regardless of whether a person or entity named in the Commissioner's August 7, 2002 decision contributed to the payment of the civil penalty described in paragraph 5.

9. **Attorney Fees and Costs.** The Commissioner and Citizens to Qualify I-125, LWVM and Others for I-125, C.B. Pearson, Jonathan Motl, Chris Newbold and Barb Seekins shall pay their respective costs and attorney's fees incurred in this matter.

10. **Effective Date of Stipulation.** This Settlement Stipulation is effective on the date all parties have signed the stipulation and the civil penalty has been paid as required by paragraph 5 of this Settlement Stipulation.

**CITIZENS TO QUALIFY I-125 and LEAGUE OF WOMEN VOTERS OF MONTANA, MONTANA COMMON CAUSE, MONT-PIRG, 2030 FUND, INC., AND CITIZENS FOR I-125**

\_\_\_\_\_  
**C.B. PEARSON, Treasurer**

Date

\_\_\_\_\_  
**JONATHAN MOTL, Deputy Treasurer**

Date

\_\_\_\_\_  
**CHRIS NEWBOLD, I-125 Principal  
Committee Member**

Date

\_\_\_\_\_  
**BARB SEEKINS, I-125 Principal  
Committee Member**

Date

COMMISSIONER OF POLITICAL PRACTICES

By: \_\_\_\_\_ Date  
Linda L. Vaughey, Commissioner

By: \_\_\_\_\_ Date  
G. Steven Brown, Legal Counsel